

NOTICE OF FINAL RULEMAKING

TITLE 3. AGRICULTURE

CHAPTER 9. DEPARTMENT OF AGRICULTURE

AGRICULTURAL COUNCILS AND COMMISSIONS

ARTICLE 2. ARIZONA GRAIN RESEARCH AND PROMOTION COUNCIL

PREAMBLE

- 1. Sections Affected**

<u>Sections Affected</u>	<u>Rulemaking Action</u>
R3-9-201	Amend
R3-9-202	Amend
R3-9-203	Amend
R3-9-204	Amend
R3-9-205	Amend

- 2. The statutory authority for the rulemaking, including both the authorizing statutes (general) and the statutes the rules are implementing (specific):**

Authorizing statutes: A.R.S. § 3-584

Implementing statutes: A.R.S. §§ 3-584 and 3-587

- 3. The effective date of the rules:**

Sixty days after the Council files the rules with the Secretary of State's Office.

- 4. A list of all previous notices appearing in the Register addressing the rules:**

Notice of Docket Opening: 14 A.A.R. 2040, May 23, 2008;

Notice of Proposed Rulemaking: 14 A.A.R. 2025, May 23, 2008.

- 5. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**

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6. An explanation of the rules, including the agency's reasons for initiating the rules:

The Arizona Grain Research and Promotion Council, serving in cooperation with the Department of Agriculture, is amending its rules to remove the specific grain assessment fee of two cents and replace it with a clause that would allow the Council to set the fee annually within statutory limitations. The objective is to give the Council more flexibility to change the fee in response to grain market fluctuations.

Additionally, the Council is amending R3-9-205 to prescribe requirements for governmental units that wish to apply for Council grants. Governmental units will include any department, commission, council, board, bureau, committee, institution, agency, government corporation, or other establishment or official of the executive branch or corporation commission of this state, another state, or the federal government. The Council's separate treatment of governmental units when applying for grants is consistent with the differences in how they are treated under Title 41, dealing with grants.

The Council is also amending its rules to make them consistent with grammar and style changes recommended in the Administrative Procedures Act.

7. A reference to any study relevant to the rules that the agency reviewed and either relied on in its evaluation of or justification for the rules or did not rely on in its evaluation of or justification for the rules, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:

Not applicable

8. A showing of good cause why the rules are necessary to promote a statewide interest if the rules will diminish a previous grant of authority of a political subdivision of this state:

Not applicable

9. The summary of the economic, small business, and consumer impact:

In fiscal year 2006-2007 the AGRPC issued \$39,328 in grants. The rulemaking will prescribe guidelines for governmental units to apply for grants, absent the public notification process and the partial distribution requirements. The Council anticipates this will affect applicants for grants by making the process more competitive, but it will also foster further research in advancing the Council's objectives for grain research and promotion. It is unlikely the rulemaking will affect public or private employment or the state's general fund. The Council has determined there are no alternative means of achieving the objectives of the rulemaking.

10. A description of the changes between the proposed rules, including supplemental notices, and final rules:

The Department erred in its justification in the preceding Notice of Proposed Rulemaking. The Department intended to state that when the AGRPC established its grant rules, it prescribed guidelines that applied to all applicants, whether they were persons (as defined by A.R.S. § 41-2701) or governmental units. This made the Council's rules more restrictive than the grant statutes in Title 41, which recognize the difference between persons and governmental units. The rulemaking resolves this restriction by prescribing a grant application process for governmental units while still preserving the openness of the evaluation process by putting consideration of the grant application before the AGRPC during an open meeting.

The Department has also made minor revisions to the rule language as suggested by GRRC staff.

11. A summary of the comments made regarding the rules and the agency responses to them:

No comments received.

12. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:

Not applicable

13. Incorporations by reference and their location in the rules:

None

14. Whether the rules were previously made as emergency rules and if so, whether the text was changed between the making as an emergency and the making of the final rules:

Not applicable

15. The full text of the rules follows:

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Section

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| R3-9-202. | Fees; Grain Assessment and Refund |
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ARTICLE 2. ARIZONA GRAIN RESEARCH AND PROMOTION COUNCIL

R3-9-201. Definitions

In addition to the definitions in A.R.S. § 3-581, the following term applies to this Article:

“AGRPC” means the Arizona Grain Research and Promotion Council.

"Department" means the Arizona Department of Agriculture.

R3-9-202. Fees; Grain Assessment and Refund

- A. The ~~Arizona Grain Research and Promotion Council~~ AGRPC shall ~~assess a fee of two cents annually prescribe the fee to be assessed~~ per hundredweight of grain sold in Arizona ~~as prescribed within the limitations established~~ under A.R.S. § 3-587.
- B. The person who pays the fee required under subsection (A) shall ensure that:
1. The grain assessment fee is remitted to the ~~Council~~ AGRPC; and
 2. The following information is provided to the ~~Council~~ AGRPC on a form obtained from the Department:
 - a. First buyer's name, address, and telephone number;
 - b. Report date and months covered by the report;
 - c. Total amount remitted to the ~~Council~~ AGRPC for the reporting period;
 - d. Producer's name, address, and telephone number;
 - e. Type of grain and tonnage by grain type; and
 - f. First buyer's or designee's signature.
- C. Refund.
1. A producer may request a refund as prescribed under A.R.S. § 3-592 and shall provide the following information to the ~~Council~~ AGRPC on a form obtained from the Department:
 - a. Producer's name, address, telephone number, and signature;
 - b. Name of the first buyer;
 - c. Amount of grain sold subject to the refund request; and

- d. First buyer's or designee's notarized signature confirming the purchase, funds withheld, and date remitted to the ~~Council~~ AGRPC.
2. An executive committee member shall authorize a refund as prescribed in A.R.S. § 3-592 if the person requesting the refund complies with the requirements of subsection (B)(1).

R3-9-203. Hearings

- A. The ~~Council~~ AGRPC shall use the uniform administrative procedures of A.R.S. Title 41, Chapter 6, Article 10 to govern any hearing before the ~~Council~~ AGRPC required under A.R.S. § 3-591.
- B. A party may file a motion for rehearing or review under A.R.S. § 41-1092.09.
- C. The ~~Council~~ AGRPC shall grant a rehearing or review of an administrative law decision for any of the following causes materially affecting the moving party's rights:
 1. The decision is not justified by the evidence or is contrary to law;
 2. There is newly discovered material evidence that could not with reasonable diligence have been discovered and produced at the original proceeding;
 3. One or more of the following deprived the party of a fair hearing:
 - a. Irregularity or abuse of discretion in the conduct of the proceeding;
 - b. Misconduct of the ~~Council~~ AGRPC, the administrative law judge, or the prevailing party; or
 - c. Accident or surprise which could not have been prevented by ordinary prudence;or
 4. Excessive or insufficient sanction.
- D. The ~~Council~~ AGRPC may grant a rehearing or review to any or all of the parties. The rehearing or review may cover all or part of the issues for any of the reasons stated in subsection (C). An order granting a rehearing or review shall particularly state the grounds for granting the rehearing or review, and the rehearing or review shall cover only the grounds stated.

R3-9-204. Records

The Department shall retain the ~~Council's~~ AGRPC's records as prescribed in A.R.S. § 3-586. A record may be reviewed at the Department's main office, Monday through Friday, except an Arizona legal holiday, during the hours of 8:00 a.m. to 5:00 p.m. A copy of a record will be provided according to the provisions of A.R.S. § 39-121 et seq.

R3-9-205. Grants

A. Definitions.

- ~~1.~~ ~~"AGRPC" means the Arizona Grain Research and Promotion Council.~~
- ~~2.~~ "Authorized signature" means the signature of an individual authorized to receive funds on behalf of an applicant and responsible for the execution of the applicant's project.
- ~~3.~~ "Awardee" means an applicant to whom the AGRPC awards grant funds for a proposed project.
- ~~4.~~ "Governmental unit" means any department, commission, council, board, bureau, committee, institution, agency, government corporation, or other establishment or official of the executive branch or corporation commission of this state, another state, or the federal government.

"Grant" means an award of financial support to an applicant according to A.R.S. § 3-584(C)(5).
- ~~5.~~ "Grant award agreement" means a document advising an applicant of the amount of money awarded following receipt by the AGRPC of the applicant's signed acceptance of the award.

B. Grant application process.

1. The AGRPC shall award grants according to the competitive grant solicitation requirements of this Article.
2. The AGRPC shall post the grant application and manual on the AGRPC's web site at least four weeks before the due date of a grant application.

3. The AGRPC shall ensure that the grant application and manual contain the following items:
 - a. Grant topics related to AGRPC projects specified in A.R.S. § 3-584(C)(5);
 - b. A statement that the information contained in a grant application is not confidential;
 - c. A statement that the AGRPC funding source is primarily from assessments on the seed of barley and wheat of all classes produced in Arizona for use as food, feed, or seed or produced for any industrial or commercial use;
 - d. An application form including sections about the description of the grant project, scope of work to be performed, an authorized signature line, and a sample budget form;
 - e. A statement that the applicant shall not include overhead expenses in the budget for the proposed project;
 - f. The criteria that the AGRPC shall use to evaluate an application;
 - g. The date and time by which the applicant shall submit an application;
 - h. The anticipated date of the AGRPC award;
 - i. A copy of this Section consisting of grant solicitation procedures and requirements; and
 - j. Any other information necessary for the grant application.
 4. The AGRPC shall not evaluate an application received by the AGRPC after the due date and time.
- C. Criteria. The AGRPC shall consider the following when reviewing a grant application and deciding whether to award AGRPC funds:
1. The applicant's successful completion of prior research projects, if applicable;
 2. The extent to which the proposed project identifies solutions to current issues facing the grain industry;
 3. The extent to which the proposed project addresses future issues facing the grain industry;

4. The extent to which the proposed project addresses the findings of any industry surveys conducted within the previous year;
 5. The appropriateness of the budget request in achieving the project objectives;
 6. The appropriateness of the proposal time-frame to the stated project objectives; and
 7. Relevant experience and qualifications of the applicant.
- D. Public participation.
1. The AGRPC shall make all applications available for public inspection by the business day following the application due date.
 2. Before awarding a grant, the AGRPC shall discuss, evaluate, and make a decision on grant applications and proposed projects at a meeting conducted under A.R.S. § 38-431 et seq.
- E. Evaluation of grant applications.
1. The AGRPC may allow applicants to make oral or written presentations at the public meeting if time, applicant availability, and meeting space permit.
 2. The AGRPC may modify an applicant's proposed project in awarding funding.
 3. The AGRPC shall notify an applicant in writing of the AGRPC's decision to fund, modify, or deny funding for a proposed project within 10 business days of the AGRPC decision. The AGRPC shall notify applicants by the U.S. Postal Service, commercial delivery, electronic mail, or facsimile.
- F. Awards and project monitoring.
1. Before releasing grant funds, the AGRPC shall execute a grant award agreement with the awardee. The awardee shall agree to accept the grant's legal requirements and conditions and authorize the AGRPC to monitor the progress of the project by signing the grant award agreement.
 2. The AGRPC shall pay no more than 50% of the grant in the initial payment to the awardee.
 3. During the term of the project, the awardee shall inform the AGRPC of changes to the awardee's address, telephone number, or other contact information.

4. The AGRPC may require an interim written report or oral presentation from the awardee during the term of the project.
 5. The AGRPC shall not award the grant funds remaining after the initial payment until the awardee submits to the AGRPC:
 - a. A final research report, and
 - b. An invoice for actual final project expenses not exceeding the remaining portion of the grant funds.
 6. The AGRPC shall make research findings and reports resulting from any grant awarded by the AGRPC available to Arizona grain producers.
- G. Repayment. If the awardee does not complete the project as specified in the grant award agreement, the awardee shall return all unexpended grant funds within 30 days after receipt of a written request by the AGRPC.
- H. Governmental units.
1. The AGRPC may request one or more governmental units to submit grant applications as prescribed in subsection (H)(3), without regard to subsections (B), (E)(2), and (E)(5).
 2. The AGRPC may issue grants to governmental units without regard to subsections (B), (E)(2), and (E)(5).
 3. A governmental unit may apply to the AGRPC for a grant when there is no pending request for grant applications under subsection (B) under the following conditions:
 - a. The application shall include a description of the project, the scope of work to be performed, a budget that does not include overhead expenses, and an authorized signature.
 - b. The application shall be available for public inspection upon receipt by the AGRPC.